

- 1 A. Yes, I do.
- 2 Q. What?
- 3 A. I was on patrol.
- 4 Q. Okay. Were you with another officer or by yourself?
- 5 A. I was by myself.
- 6 Q. All right. When you say "on patrol," were you in a car?
- 7 A. Yes, I was.
- 8 Q. Was it a marked police cruiser?
- 9 A. Yes, it was.
- 10 Q. Were you in uniform?
- 11 A. Yes, I was.
- 12 Q. Did you hear from the dispatch -- radio dispatch that
- 13 there had been a shooting somewhere?
- 14 A. Yes, I did.
- 15 Q. Do you recall where the shooting was?
- 16 A. Yes, the LAW Grille, Amesbury and Canal Street.
- 17 Q. At some point did you hear that another officer had
- 18 spotted a car that was involved allegedly in that shooting?
- 19 A. Yes, I did.
- 20 Q. Did you head to that location?
- 21 A. Yes, I did.
- 22 Q. All right. When you got to that location, had Officer --
- 23 do you know if Officer Nigohisian had already -- had he pulled
- 24 the car over?
- 25 A. No, he had not.

1 Q. What happened?

2 A. I was just calling the location. He was following the car  
3 so he had enough cars there to back him up to pull him over.

4 Q. At some point could you see -- did he pull him over?

5 A. Yes.

6 Q. How did he do that?

7 A. He activated his emergency lights.

8 Q. Did the car pull over?

9 A. Yes, it did.

10 Q. What did you do then? What did you see Officer Nigohisian  
11 do and what did you do?

12 A. We all pulled our cruisers over.

13 Q. Let's just talk about you if we can.

14 A. I pulled my cruiser directly behind Officer Nigohisian's  
15 cruiser.

16 Q. What did you see Officer Nigohisian do?

17 A. He exited his vehicle with his PA in his hand.

18 Q. His?

19 A. His PA, microphone.

20 Q. Did that appear to work?

21 A. No, it did not.

22 Q. Why would he have had his PA microphone?

23 A. We were conducting a felony stop.

24 Q. With a felony stop, very briefly, what's the purpose of  
25 that? Why do you do it?

1 A. For safety reasons. We want to give clear, concise  
2 orders, make sure they can hear us.

3 Q. In this case, did one of the police officers go up to the  
4 car and pull the suspect out of it or --

5 A. No. He was ordered out of the car.

6 Q. Okay. And so at this time what are you doing?

7 A. I got on the passenger side in a cover position.

8 THE COURT: Excuse me. Slow down. You did what on  
9 the passenger side?

10 THE WITNESS: I got into the passenger side, on the  
11 passenger side, in a cover position, to cover the car.

12 Q. When you say "cover," what's the purpose of that?

13 A. It was a gun call. We just received a call that there was  
14 a shooting and that car was involved.

15 Q. At this point are you on the opposite side of the car as  
16 the defendant -- the suspect?

17 A. Yes.

18 Q. Are you looking in the car?

19 THE COURT: Why don't you take us step by step. You  
20 go over to the passenger side, right?

21 THE WITNESS: Yes. He was ordered --

22 THE COURT: Then tell me what happens.

23 A. He was ordered out of the car as I approached the  
24 passenger side to make sure there was no one else in the car.  
25 I looked inside. I noticed there was a handgun on the

1 floorboard.

2 THE INTERPRETER: I'm sorry.

3 Q. If you would, just talk slowly.

4 Did you open the car door to get that handgun?

5 A. I opened the car door, but I did not retrieve it.

6 Q. Let me ask: Which came first? Did you open the car door  
7 first, or did you spot the gun first?

8 A. I spotted the gun first.

9 Q. Was the window open, if you recall?

10 A. I don't recall if the window was open.

11 Q. Did you stick your head through the window?

12 A. I don't recall.

13 Q. You're on the outside. Are you using a flashlight?

14 A. No, I didn't. The car was lit up with spotlights from the  
15 cruiser.

16 Q. You're on the outside. You see the gun.

17 A. Yes.

18 Q. What's your response?

19 A. I let all the other officers on the scene know there was a  
20 gun in the car.

21 Q. How did you do that?

22 A. I verbally told everyone.

23 THE INTERPRETER: I'm sorry. Who told everyone?

24 THE WITNESS: I did.

25 Q. All right. Did you see the -- did you happen to see if

1 any of the other officers had pat-frisked the suspect that  
2 night?

3 A. Officer LeFebvre.

4 Q. All right. Did he -- did you see him doing that before or  
5 after you spotted the gun?

6 A. After I spotted the gun.

7 Q. After you spotted it?

8 A. Yes.

9 Q. So the frisk occurs after you spot the gun?

10 A. I wanted -- my focus was on the car at that point, after I  
11 spotted the gun, then.

12 Q. The person who they were frisking, do you see that person  
13 in the courtroom today?

14 A. Yes, I do.

15 Q. Please identify him by where he's sitting and what he's  
16 wearing.

17 A. The desk here, with the jean jacket and the orange  
18 jumpsuit.

19 MR. MOORE: Your Honor, may the record reflect that  
20 the witness has identified the defendant?

21 THE COURT: It will.

22 Q. When you saw this gun, did you remove it?

23 A. No, I did not.

24 Q. You've opened the door. Why did you open the door?

25 A. I opened the door to remove it, but then I let detectives

1 know and they took care of it. I didn't have any gloves or  
2 anything.

3 Q. Did you call any particular detective to do it?

4 A. Detective Burokas, who was on scene, came over right away.

5 Q. Did you see him remove the gun?

6 A. Yes, I did.

7 MR. MOORE: No further questions, your Honor.

8 CROSS-EXAMINATION BY MR. LISTON:

9 Q. Officer Caraballo, did you write any reports at all in  
10 connection with your observations that night?

11 A. No, I did not.

12 Q. Did you discuss your observations?

13 A. Yes.

14 Q. Who did you discuss them with?

15 A. Detective Burokas.

16 Q. And only Detective Burokas?

17 A. Yes.

18 Q. Did you see any reports of what happened that night?

19 A. Yes, I did.

20 Q. When did you see the reports?

21 A. A couple days after and today.

22 Q. I'm going to show you something which --

23 MR. LISTON: Your Honor, has that been marked Exhibit  
24 1?

25 THE CLERK: Exhibit A.

1 Q. I'm going to show you -- I'll show you -- why don't you  
2 keep it there. I'll show you a document which is an incident  
3 report. Is this the incident report that you say you saw?

4 A. Yes, it is.

5 Q. When you saw it a couple of days afterwards, was there  
6 anything in the report that struck you as not accurate?

7 A. No.

8 Q. Now, Detective Burokas, you said, was the one who actually  
9 retrieved the weapon?

10 A. Yes.

11 Q. How much time elapsed before you claim you saw the weapon  
12 and gave a verbal response and Detective Burokas coming up and  
13 retrieving that?

14 A. Once I gave the verbal response that there was a car there  
15 and --

16 Q. There was a gun there?

17 A. Right, that there was a gun there, I saw the gentleman was  
18 being taken care of, I let him know. He came over right away.

19 Q. So within a matter of seconds?

20 A. Yes.

21 Q. So it is your testimony that Detective Burokas arrived  
22 within two or three seconds --

23 A. Yup.

24 Q. -- of the defendant leaving the vehicle?

25 A. Yes.

1 Q. Did you know that there was an alleged victim in a vehicle  
2 in which Detective Burokas had been?

3 A. No, I did not.

4 Q. Do you recall that the defendant was pointed out by  
5 somebody at some point?

6 A. No.

7 Q. I'm going to ask you to take a look at the middle three  
8 paragraphs on Page 2, starting with "Officer Nigohisian." Just  
9 read it to yourself for a moment. I'll ask you whether that  
10 refreshes your recollection in any way.

11 A. (Reading). Yes.

12 Q. Does that refresh your recollection -- does that refreshed  
13 recollection cause you to alter anything you've said so far?

14 A. No, it does not.

15 Q. Is it fair, then, to say that it was during a period of  
16 time that Officer LeFebvre placed the defendant on a sidewalk  
17 for a show-up -- that it was during that period of time where  
18 you supposedly found the weapon?

19 A. I wasn't involved in the show-up at all.

20 Q. Now, this was 12:30 at night?

21 A. Yes.

22 Q. Was the vehicle that the defendant was operating -- was  
23 that parked on a curb?

24 A. Not that I recall. It was pulled over to the right.

25 Q. So it was pulled over to one side of the road?



1 A. Yes, it was.

2 Q. It was pulled over where a parking spot might be, correct?

3 A. It could be.

4 Q. There wasn't a car between you and the defendant's  
5 vehicle, was there, when --

6 A. Officer Nigohisian's car was --

7 Q. Officer Nigohisian's car was behind?

8 A. Behind. My car was behind Officer Nigohisian's car.

9 Q. So that the defendant's car was in front?

10 A. Yes.

11 Q. So is it fair to say that the only police lights that were  
12 shining were lights from the back?

13 A. No, because there was other cruisers all over.

14 Q. What do you mean "all over"?

15 A. All over the street. Everyone on the shift responded to  
16 the call.

17 Q. Well, were there any lights shining from the right?

18 A. There were cruisers pulled into the middle of the road,  
19 yes.

20 Q. That wouldn't be from the right, would it?

21 A. What do you mean?

22 Q. That would be from the left?

23 A. From the left, yes.

24 Q. There was no lights shining from where you were supposedly  
25 standing?

1 A. No.

2 Q. There was a front seat?

3 A. Yes, there was.

4 Q. And you looked in the front seat?

5 A. I looked in the front window.

6 Q. And how much space between the end of the seat and the  
7 dashboard was there?

8 A. I couldn't tell you, a couple feet maybe.

9 Q. A couple of feet?

10 A. Yeah.

11 Q. Where did you see the weapon?

12 A. On the floorboard in front of the seat.

13 Q. In plain view?

14 A. In plain view.

15 Q. So it is your testimony -- was it the entire weapon that  
16 was visible to you?

17 A. Yes, it was.

18 Q. Did you identify it -- what kind of weapon did you  
19 identify it as?

20 A. I didn't identify it as a weapon. I identified it as a  
21 handgun on the floorboard.

22 Q. Now, do you see where this says, "Officer Caraballo found  
23 under the passenger's front seat a .45-caliber handgun loaded"?

24 A. It was not under.

25 Q. Didn't I ask you to read this and whether there was

1 anything in there that was not correct?

2 A. I didn't write the report, sir.

3 Q. You saw it a couple days later, and you didn't change it,  
4 did you?

5 A. I can't change someone else's report.

6 Q. You could suggest to them that the report is incorrect,  
7 couldn't you?

8 A. I could.

9 Q. But you didn't?

10 A. No.

11 Q. So it's your testimony now that you didn't find it under  
12 the passenger seat?

13 A. No, I did not, sir.

14 Q. It wasn't under the passenger seat?

15 A. No, it was not.

16 Q. It was on the floorboard?

17 A. Yes, it was.

18 Q. And the entire firearm was visible to you?

19 A. Yes, it was, sir.

20 Q. Now, you didn't know it was loaded, did you?

21 A. No, I did not.

22 Q. Is it fair to say that as far as you knew what -- Sergeant  
23 Carroll wrote this report, right?

24 A. That's correct.

25 Q. Sergeant Carroll's report says that the weapon was under

1 the passenger seat?

2 A. That's correct.

3 THE INTERPRETER: It was what?

4 MR. LISTON: Under the passenger seat.

5 Q. You say that that's incorrect?

6 A. Correct.

7 Q. Now, did you talk to Sergeant Carroll today?

8 A. Did I talk to him today? Yeah.

9 Q. And did you meet with him and others in connection with  
10 your testimony today?

11 A. Yes, I have.

12 Q. And did you tell him about that?

13 A. I did.

14 Q. What did you tell him?

15 A. I told the gentleman that I saw the firearm in plain view  
16 on the floorboard.

17 Q. Now, did you ever tell anybody before today that you saw  
18 the firearm in plain view completely on the floorboard?

19 A. Yeah, the day of the incident.

20 Q. Who did you tell on the day of the incident?

21 A. Detective Burokas.

22 Q. You told that to Detective Burokas?

23 A. Yes.

24 Q. That you saw it on the floorboard?

25 A. Yes.

1 Q. Entirely?

2 A. Yes.

3 Q. You made it absolutely clear to him?

4 A. Absolutely.

5 Q. There's no doubt about that?

6 MR. MOORE: Asked and answered, your Honor.

7 Q. Did you remind him of that today, this morning, when you  
8 were talking about it?

9 A. No, I did not.

10 Q. Did he say anything about it?

11 A. No, he did not.

12 THE COURT: Did you talk to him this morning?

13 THE WITNESS: Yes, we did.

14 Q. You talked to Sergeant Carroll as well?

15 A. Yes, I did.

16 Q. Was he surprised, to your knowledge? Did he seem  
17 surprised when you told him you actually saw the entire gun on  
18 the floorboard?

19 A. No, he did not.

20 MR. LISTON: No further questions, your Honor.

21 MR. MOORE: No questions, your Honor.

22 THE COURT: Thank you.

23 MR. MOORE: Your Honor, the government would call as  
24 its next witness Officer Charles Carroll.

25 Your Honor, I hadn't planned on calling this witness.

1 This will be very quick. There's one additional witness after  
2 this which I expect would also be very quick, the booking  
3 officer.

4 THE COURT: Why do you need the booking officer?

5 MR. MOORE: Because he's the one who read the Miranda  
6 rights, which is asserted in the defendant's suppression  
7 motion.

8 THE COURT: We don't need that.

9 MR. MOORE: He also heard the defendant's statement.

10 THE COURT: What does it matter?

11 MR. MOORE: Well, because in his papers, the defendant  
12 sought to suppress the --

13 THE COURT: It's fruit of poisonous tree stuff.  
14 That's exactly why I asked Mr. Liston that question.

15 MR. LISTON: That's right, your Honor.

16 MR. MOORE: May I add, your Honor, that the Court may  
17 not be aware. I think it's found in the police report.  
18 Actually, it's a different police report. There were also --  
19 just for the Court's consideration, there were shell casings  
20 which were matching found in the lot and the suppression  
21 statements conceivably could be involved in that. And the  
22 defendant has not moved for those spent cartridges.

23 THE COURT: All I've got is what I've got right now.  
24 As I understand the case, it's -- why don't we just get through  
25 this witness, and we'll see whether we need the last one.

1 MR. MOORE: Yes, your Honor. Thank you.

2 CHARLES CARROLL, Sworn

3 THE CLERK: Please be seated. Would you state your  
4 name and spell it for the record, please.

5 THE WITNESS: Yes. My name is Sergeant Charles  
6 Carroll, C-A-R-R-O-L-L, Lawrence Police Department.

7 DIRECT EXAMINATION BY MR. MOORE:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Please speak clearly and slowly, if you will.

11 A. Yes, sir.

12 Q. What do you do for a living?

13 A. I --

14 Q. How long have you been doing that for a living?

15 A. Approximately 28 years.

16 Q. Briefly describe your training, please. Briefly describe  
17 your training.

18 A. I've gone to a police academy in the late 1970s. I've  
19 gone to numerous seminars, in-service training every year.

20 Q. On the night of July 14, 2004, at approximately 12:30  
21 p.m., where were you?

22 A. At that time I was in the Lawrence police station.

23 Q. All right. Were you with any other officers right then?

24 A. I was with Detective Burokas.

25 Q. Did you become aware of a shooting that had occurred at



1 the LA Grille?

2 A. Yes, sir, I did.

3 Q. How did you become aware of that?

4 A. The victim came to the station to report it.

5 Q. Were there any calls that were made into the station that  
6 you were aware of, 911 calls?

7 A. Yes. As a result of that, yes, there were calls to the  
8 station, yes.

9 Q. Okay. The victim said a shooting had occurred, right?

10 A. That's correct.

11 Q. Were you then with Detective Burokas the rest of the  
12 evening through this incident?

13 A. Yes, sir.

14 Q. Were you then driving the car with Mr. Edison Gonzalez in  
15 it?

16 A. Yes, sir.

17 Q. And did you eventually end up at the scene where the  
18 suspect's car had been pulled over?

19 A. That's correct, yes, sir.

20 Q. Are you the police officer, the sergeant, who had -- who  
21 wrote the report in this case?

22 A. Yes, sir, I did.

23 Q. All right. Let me ask you, in writing that report, how  
24 did you consult with the other officers involved?

25 A. I spoke to all of the officers individually that were



1 involved in the report, got from them exactly what they did,  
2 and then I transcribed it into a police report.

3 Q. All right. Is that meant to be a synopsis of what  
4 happened that evening of the essential facts?

5 A. Yes.

6 Q. Do you submit it to them literally for their approval  
7 before you proceed with the final draft of it?

8 A. No, sir, I do not.

9 Q. All right. Do you ask them to take a look at it?

10 A. No, sir, I do not.

11 Q. Do you recall asking any of them to take a look at it in  
12 this case before you --

13 A. No, sir, I do not.

14 Q. Do you believe that you were aware of each and every fact  
15 as it occurred that evening?

16 A. To the best of my knowledge, yes, sir.

17 Q. All right. When you say -- when I say "facts," I'm  
18 referring to the essential facts involved in this case. Is  
19 that what you're referring to?

20 A. Yes, sir.

21 Q. Now, in your report, you refer to a protective sweep being  
22 done prior to the defendant being identified. Now, what, to  
23 you, is a protective sweep?

24 A. That's just a sweep of the interior of the car, under the  
25 driver's seat, passenger seat, for any weapons that could be

1 used.

2 Q. Okay. In this case, were you in a position to hear  
3 Officer Caraballo that night?

4 A. To hear him?

5 Q. Yeah. Let me ask more specifically. Did you hear him  
6 yell "gun"?

7 MR. LISTON: Objection, your Honor. Somewhat leading.

8 THE COURT: Well --

9 A. No, I did not hear that.

10 Q. You didn't hear him yell "gun"?

11 A. No.

12 Q. How far away from Officer Caraballo were you?

13 A. At the specific car, I was probably maybe about 30 or 40  
14 feet away.

15 Q. Were there a lot of lights and a lot of action?

16 THE COURT: You know what? I know it's late in the  
17 day but he was a percipient witness, too, so let's not lead so  
18 much.

19 MR. MOORE: I'm not sure how to ask --

20 Q. Was there a lot going on?

21 A. Yes, sir, there was.

22 Q. Could you describe what was going on?

23 A. Yes. There were a number of police officers there, a  
24 number of marked cruisers with blue lights, spotlights. There  
25 were some unmarked units. They had the individual out of the

1 motor vehicle. We had a victim.

2 THE COURT: Know what? Can we just back up for a  
3 minute. You were there. Tell it to us as you remember right  
4 now. I understand -- why don't you just tell us, as you  
5 arrived, what you saw, what you heard. Not the royal "we."  
6 What you remember.

7 A. I remember I arrived on the scene with Detective Burokas.  
8 I observed a number of marked cruisers with lights, spotlights.  
9 I saw a blue BMW. I saw an individual being removed by two  
10 uniformed police officers from that BMW. I saw other officers  
11 near the BMW.

12 At this time I walked up to where the two officers had  
13 the individual. I saw that he was handcuffed. And I went back  
14 to my car where I had the victim take a look at the individual.  
15 The victim identified him as the person that shot him. And  
16 that person is Mr. Rivera.

17 THE COURT: What person?

18 THE WITNESS: Excuse me, your Honor?

19 THE COURT: Wait a minute. You asked the victim to  
20 identify him.

21 THE WITNESS: I asked the victim if he could identify  
22 the person that shot at him. He pointed to Mr. Rivera, said,  
23 "That's the person that shot at me."

24 Q. Do you see the person known to you at that time as Mr.  
25 Rivera in the courtroom today?

1 A. Yes.

2 Q. Please identify him by where he is sitting and what he is  
3 wearing.

4 A. He's sitting right next to the defense counsel, wearing a  
5 blue jacket.

6 MR. MOORE: Your Honor, may the record reflect that  
7 the witness has identified the defendant?

8 THE COURT: Yes. Let me just say, is there a  
9 stipulation? I'm confused on the names. Is that a different  
10 name?

11 MR. MOORE: Well, unfortunately, your Honor, there's  
12 an issue in this because the defendant starts with being an  
13 illegal alien in possession. He identified himself that night  
14 as Jose Rivera.

15 THE COURT: Is that the name that the defendant  
16 identified himself as?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: I need to know the genesis of the name.  
19 That's all.

20 Q. You wrote in your report about a show-up on the sidewalk.

21 A. That's correct.

22 Q. What's a show-up on a sidewalk, generally?

23 A. A show-up on a sidewalk is, shortly after an incident,  
24 just a one-on-one with the victim of a crime and the possible  
25 perpetrator of a crime.